

EXHIBIT 1



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Judge Orders U.S. to Release Names of 9/11 Detainees

by Neil A. Lewis

WASHINGTON, Aug. 2 — A federal judge ruled today that the Bush administration had no right to conceal the identities of hundreds of people arrested after the Sept. 11 terror attacks, and she ordered that most of their names be released within 15 days.

The ruling by Judge Gladys Kessler of Federal District Court dealt a significant setback to the government's policy of secret detentions, mostly of immigrants, in connection with the Sept. 11 investigation. Judge Kessler rejected the Justice Department's arguments that disclosure of the names would impede its investigation of terrorists.

She said that while it was the obligation of the executive branch to ensure the physical security of American citizens, "the first priority of the judicial branch must be to ensure that our government always operates within the statutory and constitutional constraints which distinguish a democracy from a dictatorship."

"Unquestionably," she added, "the public's interest in learning the identity of those arrested and detained is essential to verifying whether the government is operating within the bounds of law."

Judge Kessler's opinion in the case, which had been brought by a broad coalition of groups, including some civil liberties organizations, was the latest ruling issued in the handful of cases now making their way up the federal court system challenging some of the government's policies put in place after the Sept. 11 attacks.

In some cases, the courts have been receptive to the government's arguments, but in several others judges have resisted claims of broad executive authority.

In one case, both a district court and an appeals court panel ruled against the government in Michigan, saying the Justice Department could not close deportation proceedings to the public and the news media.

The government gained a victory elsewhere in the courts this week when a federal judge ruled that the more than 560 prisoners detained at the Guantánamo Naval Base in Cuba were beyond the reach of United States courts.

Justice Department officials will probably ask a federal appeals court to delay Judge Kessler's ruling from taking effect while it appeals, but officials there said today that they had not yet decided to do so. Nevertheless, Robert McCallum, the assistant attorney general for the civil division, had harsh words for Judge Kessler's ruling.

"The Department of Justice believes today's ruling impedes one of the most important federal law enforcement investigations in history, harms our efforts to bring to justice those responsible for the heinous attacks of Sept. 11, and increases the risk of future terrorist threats to our nation," Mr. McCallum said.

He said the F.B.I. and the department's criminal division "firmly believe that the information sought by the plaintiffs, if released, could jeopardize the investigation and provide valuable information to terrorists seeking to cause even greater harm to the safety of the American people."

The opinion noted that the government said on Nov. 5 that it had detained 1,182 people in connection with the Sept. 11 investigation. But Judge Kessler suggested that the numbers were confusing and that the Justice Department has never given a full accounting of who had been arrested.

"As of this moment," she said, "the public does not know how many persons the government has arrested and

detained as part of its Sept. 11 investigation, nor does it know who most of them are, where they are and whether they are represented by counsel."

Amid the uncertainty, the judge noted that the Justice Department had provided some numbers, notably that 751 people were arrested for immigration violations. As of June 13, only 74 remained in custody, the rest having been released or deported.

That is the category most directly affected by Judge Kessler's order. If her ruling stands, the government would have to release the names of at least those 751, even those who have left the country.

The government has also said that it arrested and charged 129 people on federal criminal charges and that it has already released those names.

The last category encompasses people arrested as material witnesses. The government has never disclosed the number or identities of those people but it has been estimated to be about two dozen, most of whom have been released. Judge Kessler asked the government to provide further evidence why the names of materials witnesses should not be released.

The suit asking for disclosure of the immigration detainees' names was brought by 22 advocacy groups, including the Center for National Security Studies, the American Civil Liberties Union, the Reporters Committee for Freedom of the Press, the American-Arab Anti-Discrimination Committee and People for the American Way Foundation.

Kate Martin, of the Center for National Security Studies and the lead lawyer for those challenging the government's policy, called the ruling "a vindication of our basic liberties and a demonstration that the courts are there to stop government abuses."

Ms. Martin said it showed that the events of Sept 11 "may not be used as an excuse to suspend basic rights."

Although most of the people who would be affected are no longer in custody, she said, the ruling still has great value.

"It will prevent the government from doing this again," she said. "Moreover, it will give us the information to evaluate how these people were treated and whether this was a random roundup of Arabs and Muslims or a legitimate targeted investigation of terrorism as the government has claimed."

The Justice Department had argued that the disclosure of the names of those arrested for immigration violations would hinder the investigation. It would, they said, reduce the inclination of detainees to help authorities because the terrorist groups would intimidate or cut off contact with them once their names were known. Judge Kessler said that argument was unpersuasive since the terrorist groups must already know who was arrested as those in custody have always been free to disclose their situation to the public.

Judge Kessler dismissed as too speculative the government's argument that the release of the names would allow terrorist groups to track the progress of its investigation. The government put forward a so-called "mosaic theory" of the investigation, arguing that there are bits of information like the names of the detainees that may seem useless by themselves but can form part of a larger, revealing picture.

Attorney General John Ashcroft has been the most vocal defender of the government's refusal to identify everyone who had been arrested. He has repeatedly said he was prevented from disclosing the names because it would violate the privacy of those arrested.

Judge Kessler said that the government might ask detainees if any wanted their name excluded from the list and that if any asked for confidentiality, it would be respected.

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